

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

B. BRAUN MELSUNGEN AG &  
B. BRAUN MEDICAL INC.,

Plaintiffs,

v.

TERUMO MEDICAL CORPORATION &  
TERUMO CORPORATION,

Defendants.

Civil Action No.: 09-347-JJF-LPS

Jury Trial Demanded



**JOINT PROPOSED RULE 16 SCHEDULING ORDER**

Plaintiffs B. Braun Melsungen AG and B. Braun Medical Inc. (collectively "Braun") and Defendants Terumo Medical Corporation and Terumo Corporation (collectively "Terumo") have conferred pursuant to Federal Rule of Civil Procedure 26(f) in connection with the Scheduling Conference that occurred on July 8, 2009. In accordance with the rules, the parties discussed the following matters and submit this Proposed Rule 16 Scheduling Order. Certain scheduling issues herein were resolved and ordered by Magistrate Judge Stark in connection with a discovery and scheduling hearing that occurred on September 24, 2009.

**1. Pre-Discovery Disclosures.**

The parties exchanged, by July 31, 2009, the information required by Fed. R. Civ. P. 26(a)(1) and D. Del. LR 16.1.

**2. Joinder of Other Parties.**

All motions to join other parties were to be filed on or before August 21, 2009.

### **3. Mediator and Settlement Conference.**

The parties have agreed to retain B. Wilson Redfearn, Esquire, for the purposes of mediation and exploring the possibility of a settlement in this case. This Court has ordered the parties to report on mediation progress at ninety (90) day intervals.

### **4. Discovery on Issues of Liability.**

(1) *Contention Interrogatories.* Plaintiffs exchanged their initial infringement contention claim charts on September 8, 2009. Defendants exchanged their initial invalidity contention claim charts on September 22, 2009. Plaintiffs will further supplement their infringement contention claim charts by October 15, 2009. The parties will otherwise complete responses to contention interrogatories (subject to Rule 26(e) supplementation) by December 30, 2009.

(2) *Document Production and Identification of Fact Witnesses.* Identification of fact witnesses and document production on issues of liability shall be completed by December 11, 2009.

(3) All remaining fact discovery on issues of liability shall be commenced so as to be completed by March 11, 2010.

(4) Maximum of 25 interrogatories, including contention interrogatories, for each side.

(5) Maximum of 50 requests for admission by each side.

(6) Maximum of 40 deposition hours by each side, including non-party depositions, but excluding expert depositions. The presumptive seven (7) hour limit per deponent of Fed. R. Civ. P. 30(d)(1) shall apply, but the ten (10) deposition limit of Fed. R. Civ. P. 30(a)(2)(A)(i) shall not apply. Translated depositions are allowed 10.5 hours of deposition time but shall only count as 7 hours against the total deposition hours (e.g. each 1 hour of a translated deposition counts as 2/3

of an hour against the deposition time limit). No individual witness is required to sit for more than 7 hours of deposition in a single day.

(6) Reports from retained experts required by Fed. R. Civ. P. 26(a)(2) are due from the party with the burden of proof on the issue the expert is offered by March 26, 2010. Rebuttal expert reports are due by April 16, 2010. Expert depositions shall be completed by May 7, 2010.

**5. Service.**

The parties agree to serve courtesy copies of all pleadings and other papers identified in Fed. R. Civ. P. 5(a) via email delivery. The provisions for additional time pursuant to Fed. R. Civ. P. 6(d) shall not apply.

**6. Limits on Electronic Discovery.**

The parties agree that there will be no collection or production of backup tape email or electronic data. For purposes of liability-phase discovery, email collection will be limited to the five most relevant custodians for whom each party believes, in good faith, possesses the most relevant and responsive email documents ("Email Custodians"). The parties agree to disclose the names and titles of its five Email Custodians by October 28, 2009, along with a brief description of each Email Custodian's responsibilities. The parties reserve their right to object to any Email Custodian as not possessing the most relevant and responsive email documents. Collection of emails will be further limited to emails sent or received during the twelve month period prior to the filing of the lawsuit, and to emails containing specified search terms to which the parties have agreed. A party may affirmatively choose to rely on its own email, and by doing so that party makes any related non-privileged emails subject to discovery.

The parties' agreement on the scope of email discovery does not limit or define the scope of relevancy in this case, including for other forms of discovery, and thus this agreement does

not form the basis for precluding non-email discovery on subject matter contained in unsearched emails.

**7. Non-Case Dispositive Motions.**

(a) Any non-case dispositive motion, along with an Opening Brief, shall be filed with a Notice of Motion. The Notice of Motion shall indicate the date on which the movant seeks to have the motion heard. The hearing date selected shall allow time for filing of the motion, allow for briefing in accordance with the Federal and Local Rules, and shall permit all briefing to be filed no later than 12:00 noon the Friday before the motion day on which it is to be heard. Available motion dates will be posted on the Court's website at:

<http://www.ded.uscourts.gov/JJFmain.htm>

(b) At the motion hearing, each side will be allocated ten (10) minutes to argue and respond to questions from the Court.

(c) Upon filing of the Notice of Motion, a copy of said Notice shall be sent to Chambers by-email at:

[jjf\\_civil@ded.uscourts.gov](mailto:jjf_civil@ded.uscourts.gov)

**8. Amendment of the Pleadings.**

All motions to amend the pleadings shall be filed on or before December 22, 2009.

**9. Case Dispositive Motions.**

Any case dispositive motions, pursuant to the Federal Rules of Civil Procedure, shall be served and filed with an opening brief on or before May 21, 2010. Briefing shall be pursuant to D. Del. LR 7.1.2. The parties shall follow the Court's procedures for summary judgment motions which is available on the Court's website at:

<http://www.ded.uscourts.gov/JJFmain.htm>

**10. Markman.**

A Markman Hearing, if necessary, will be held on January 21, 2010. By October 29, 2009, each party shall exchange a list of proposed claim terms that the party contends should be construed by the Court. By November 17, 2009, each party shall exchange proposed constructions for all claim terms either party proposed for construction. The parties shall file opening claim construction briefs by December 15, 2009, and opposition claim construction briefs by January 8, 2010. The Court, after reviewing the briefing, will allocate time to the parties for the hearing. Argument shall be limited to one (1) hour per side.

**11. Applications by Motion.**

(a) Any applications to the Court shall be by written motion filed with the Clerk of the Court in compliance with the Federal Rules of Civil Procedure and the Local Rules of Civil Practice for the United States District Court for the District of Delaware (Amended Effective June 30, 2007). Any nondispositive motion shall contain the statement required by D. Del. LR 7.1.1 and be made in accordance with the Court's February 1, 2008 Order on procedures for filing non-dispositive motions in patent cases. Briefs shall be limited to no more than ten (10) pages. Parties may file stipulated and unopposed Orders with the Clerk of the Court for the Court's review and signing. The Court will not consider applications and requests submitted by letter or in a form other than a motion.

(b) No facsimile transmissions will be accepted.

(c) No telephone calls shall be made to Chambers.

(d) Any party with a true emergency matter requiring the assistance of the Court shall e-mail Chambers at: [jjf\\_civil@ded.uscourts.gov](mailto:jjf_civil@ded.uscourts.gov). The e-mail shall provide a short statement describing the emergency.

## 12. Pretrial Conference and Trial

### (a) On Issues of Liability.

(1) The parties shall appear for a Pretrial Conference on June 18, 2010, at 10 a.m. <sup>LPA</sup> ~~p.m.~~ in Courtroom 4B on the 4th Floor, United States Courthouse, Boggs Federal Building, Wilmington, Delaware. The Federal Rules of Civil Procedure and D. Del. Local Rule 16.3 shall govern the conference.

<sup>LPA</sup>  
The issue of the trial date will be reconsidered at the pretrial conference and may be delayed by up to two weeks depending on the status of defense counsel's other trial commitment described in D.I. 39.

(2) A seven (7) day jury trial on issues of liability will commence on July 26, 2010, at 9:00 a.m. in Courtroom 4B on the 4th Floor, United States Courthouse, Boggs Federal Building, Wilmington, Delaware. [Defendants: Terumo has filed a letter respectfully requesting that the court move the trial date to August 9, 2010, because the current July 26, 2010 date conflicts with another trial that counsel for Terumo has scheduled to begin on June 28, 2010; Plaintiffs: Braun would accommodate an earlier trial date in June 2010, but for the reasons set forth in Braun's September 24, 2009 letter to the Court, Braun objects to moving the trial date later than July 2010]. <sup>LPA</sup>

If liability is found, a schedule for briefing and hearing on an injunction will be determined pursuant to D. Del. LR 7.1.2 [Plaintiffs: immediately after entry of jury verdict; Defendants: immediately after the court rules on all post-trial motions] <sup>LPA</sup>

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/s/ Melanie K. Sharp

/s/ Douglas E. McCann

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Dated: October 7, 2009

October 9, 2009  
DATE

  
UNITED STATES DISTRICT JUDGE